

Bettina B. Plevan
Member of the Firm
d +1.212.969.3065
f 212.969.2900
bplevan@proskauer.com
www.proskauer.com

September 4, 2019

BY ECF

Honorable Gabriel W. Gorenstein
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Marquez v. Hoffman et al., 1:18-CV-07315 (ALC)

Dear Judge Gorenstein,

We represent defendant, the Honorable Douglas Hoffman. We write in response to Your Honor's August 29, 2019 order, Dkt 145, to state our objections to Plaintiff's discovery proposals as we understand them.

On July 22, 2019, Plaintiff submitted a letter to the Court outlining a proposal to govern the "initial phases of discovery." See Dkt. 105. Plaintiff's proposed preliminary schedule identified October 11, 2019 as the date for the Rule 26(f) conference, but noted in a footnote:

"[t]his proposed preliminary discovery schedule begins one week after motions to dismiss and motions to stay discovery are fully briefed by the parties. See Dkt. 104. If the motion briefing schedule is extended for any reason, this schedule shall also be adjusted accordingly."

Defendant Hoffman objected to Plaintiff's proposed schedule and requested that Your Honor schedule a Rule 26 conference "within the next three weeks" so that discovery could begin. See Dkt. 106.

On August 12, 2019, the parties appeared before Your Honor, at which time Your Honor ordered all parties to participate in a Rule 26(f) conference within one week. As noted in the Rule 26(f) Discovery Plan previously submitted, Dkt. 144, Plaintiff did not participate in the parties' August 15, 2019 Rule 26(f) conference, citing that her counsel "has too many items scheduled in a small window" and that he would not be in a position to "meaningfully participate in a 26(f) conference until [he has] had an opportunity to prepare for it" which would not be until after full submission of the motions to dismiss and for a stay of discovery. (*See Attached.*) Twice

thereafter Defendant Hoffman sought Plaintiff's position on the defendants' proposed discovery plan, each time receiving the same response.

Defendant Hoffman objects to Plaintiff's proposal that the parties' Rule 26(f) conference not be held until after the motions to dismiss and motions to stay are fully briefed, which will now not occur until November 29, 2019. Plaintiff's proposal of another three-month delay in commencing discovery on the basis that her counsel allegedly lacks time to prepare for a Rule 26(f) conference is improper. As Your Honor noted during the August 12 conference, the burden of preparing for a Rule 26(f) conference and of drafting discovery requests that relate only to Defendant Hoffman, is minimal. The fact that Plaintiff's counsel is busy responding to motions in a litigation that she filed, is insufficient to justify any further delay of discovery for a litigation that has already been pending for more than a year and in which not a single piece of paper has been exchanged amongst the parties.

For the reasons stated above, Defendant Hoffman objects to Plaintiff's proposal to defer the Rule 26(f) conference and discovery until after the pending motions are fully submitted.

Respectfully submitted,

/s/ Bettina B. Plevan

Bettina B. Plevan

cc: All Counsel of Record

Attachment

Guerrasio, Edna D.

From: Tony Vassilev <tony@vassilev.cc>
Sent: Tuesday, August 13, 2019 10:24 AM
To: Plevan, Bettina B.
Cc: Michael J. Siudzinski; Goodstein, Shari; Hanna, Monica; Guerrasio, Edna D.; Linscott, Mark A.
Subject: Re: Rule 26(f) Conference

Hi Betsy,

As I said at the conference yesterday, I do not have an adequate opportunity to prepare for a meaningful 26(f) conference at this time given the current outstanding motions. In addition, part of the available time that was originally dedicated to briefing our opposition to those motions has been allocated instead to addressing the recent letters, court appearance, and the release of Plaintiff's confidential information onto the public docket. The defendants are seeking to schedule this 26(f) conference at the exact time that I can neither prepare nor participate meaningfully given our other obligations. The defendants have had many opportunities to hold a 26(f) conference over the past 6 months. Plaintiff attempted to hold a 26(f) conference, and repeatedly noted that such a conference had not taken place, but the State Defendants would not participate. Hoffman did not attempt to compel the State Defendants to participate in a 26(f) conference during those 6 months. I have repeatedly informed Hoffman that I would be unable to participate substantially in discovery while I am briefing motions to dismiss. I have also repeatedly offered to schedule a 26(f) conference after the current set of motions are briefed, but Hoffman has repeatedly rejected that offer. Hoffman's position appears to be that he must hold this conference at the exact time that Plaintiff is least able to prepare for it.

I do not yet have the benefit of a transcript from yesterday's conference, but I believe Judge Gorenstein may have expected us to hold a 26(f) conference next week, not this week. In either case, I intend to appeal his decision not to afford Plaintiff an adequate opportunity to prepare for a 26(f) conference to Judge Carter. If you would like to agree instead to hold a Rule 26(f) conference after motions are briefed — at a time when Plaintiff can adequately prepare for it — please let me know.

In short, Plaintiff currently has too many items scheduled in a small window. I will therefore be unable to meaningfully participate in a 26(f) conference until I have an opportunity to prepare for it and until we receive Judge Carter's decision. I ask that, if any defendant seeks to object to Plaintiff's position on the 26(f) conference in a submission to the Court, that you include this communication in full in your exchange with the Court and do not quote selectively from it.

Sincerely,
Tony

On Tue, Aug 13, 2019 at 9:29 AM Plevan, Bettina B. <BPlevan@proskauer.com> wrote:

Tony can you confirm Thursday at 12:30? Thanks.

Bettina (Betsy) B. Plevan
Member of the Firm

Proskauer

Eleven Times Square
New York, NY 10036-8299
d 212.969.3065
f 212.969.2900
bplevan@proskauer.com

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Please consider the environment before printing this email.

From: Michael J. Siudzinski <MSIUDZIN@nycourts.gov>
Sent: Tuesday, August 13, 2019 9:26 AM
To: Plevan, Bettina B. <BPlevan@proskauer.com>; 'Goodstein, Shari' <Shari.Goodstein@ag.ny.gov>; 'Tony Vassilev' <tony@vassilev.cc>; Hanna, Monica <Monica.Hanna@ag.ny.gov>
Cc: Guerrasio, Edna D. <eguerrasio@proskauer.com>; Linscott, Mark A. <MLinscott@proskauer.com>
Subject: RE: Rule 26(f) Conference

I'm not available on Thursday until after 12:30 p.m. I am available on Wednesday all day, but it sounds like the OAG is not.

-MS

From: Plevan, Bettina B. <BPlevan@proskauer.com>
Sent: Monday, August 12, 2019 9:27 PM
To: 'Goodstein, Shari' <Shari.Goodstein@ag.ny.gov>; 'Tony Vassilev' <tony@vassilev.cc>; Hanna, Monica <Monica.Hanna@ag.ny.gov>; Michael J. Siudzinski <MSIUDZIN@nycourts.gov>
Cc: Guerrasio, Edna D. <eguerrasio@proskauer.com>; Linscott, Mark A. <MLinscott@proskauer.com>
Subject: RE: Rule 26(f) Conference

Thanks. Tony ?

From: Goodstein, Shari <Shari.Goodstein@ag.ny.gov>
Sent: Monday, August 12, 2019 5:21 PM
To: Plevan, Bettina B. <BPlevan@proskauer.com>; 'Tony Vassilev' <tony@vassilev.cc>; Hanna, Monica <Monica.Hanna@ag.ny.gov>; 'msiudzin@nycourts.gov' <msiudzin@nycourts.gov>
Cc: Guerrasio, Edna D. <eguerrasio@proskauer.com>; Linscott, Mark A. <MLinscott@proskauer.com>
Subject: RE: Rule 26(f) Conference

Betsy,

Thursday from 11-1:15 and 3:15 to 6 works on our end.

Thanks,

Shari

Shari M. Goodstein | Assistant Attorney General

New York State Office of the Attorney General

28 Liberty Street

New York, New York 10005

Tel: (212) 416-8567 | fax: (212) 416-6009

Shari.Goodstein@ag.ny.gov

From: Plevan, Bettina B. <BPlevan@proskauer.com>

Sent: Monday, August 12, 2019 4:41 PM

To: 'Tony Vassilev' <tony@vassilev.cc>; Goodstein, Shari <Shari.Goodstein@ag.ny.gov>; Hanna, Monica <Monica.Hanna@ag.ny.gov>; 'msiudzin@nycourts.gov' <msiudzin@nycourts.gov>

Cc: Guerrasio, Edna D. <eguerrasio@proskauer.com>; Linscott, Mark A. <MLinscott@proskauer.com>

Subject: Rule 26(f) Conference

Please let us know if you are available on Wednesday, August 14, morning from 9:00 to 12:30 p.m. or on Thursday, August 15, between 11:00 a.m. and 6:00 p.m. for our Rule 26(f) conference. We can use the following dial-in number: (866) 239-6216; Access Code: 2129693065.

Thank you,

Bettina (Betsy) B. Plevan

Member of the Firm

Proskauer

Eleven Times Square
New York, NY 10036-8299
d 212.969.3065
f 212.969.2900
bplevan@proskauer.com

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